THE MADRAS CODE

VOLUME I

PART I.

UNREPEALED REGULATIONS OF THE GOVERNOR OF FORT ST. GEORGE IN COUNCIL.

MADRAS REGULATION III OF 1802.[1]

[THE MADRAS ADMINISTRATION OF ESTATES REGULATION, 1802.]

[*1st January 1802.*]

A Regulation for receiving, trying and deciding suits or complaints declared cognizable in the Courts of Adàlat established in the several Zilas immediately subject to the Presidency of Fort St. George.

THE following rules are enacted for receiving, trying and deciding suits or complaints declared cognizable in the Courts of Adàlat established in the several Zilas.

2 to 6. [*Parties to suits: contents of complaints: procedure in suits.*] *Rep., Central Act X of* 1861.

7. [*Provisions regarding attendance of witnesses, depositions and exhibits.*] *Rep., Central Acts X of* 1861 *and III of* 1873.

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[1] Short title, "The Madras Administration of Estates Regulation, 1802" —*see* the Repealing and Amending Act, 1901 (Central Act XI of 1901).

Section 1 and the unrepealed part of s. 16 of this Regulation were declared by the Laws Local Extent Act, 1874 (Central Act XV of 1874)—s. 4 and the Second Schedule—to be in force in the whole of the Presidency of Madras except the territories mentioned in the Sixth Schedule to that Act. S. 1 and the unrepealed part of s. 16 have been declared by notification under s. 3 of the Scheduled Districts Act, 1874 (Central Act XIV of 1874), to be in force in the Rampa country—*see Gazette of India*, 1879, Pt. I, p. 630, and *Fort St. George Gazette, ibid.*, p. 723.

The same portions of the Regulation have been extended, by notification under s. 5 of the same Act, to the Taluqs of Bhadrachalam and Rakapilli—*see Gazette of India*, 1879, Pt. I, p. 630, and *Fort St. George Gazette, ibid.*, p. 722. The Regulation has been extended by a notification under s. 5 of the Scheduled Districts Act to the Muttas of Dutcharti and Guditeru of the Godavari Agency —*see Fort St. George Gazette*, 1930, Pt. I, p. 553.

The same portions of the Regulation are in force in the Nugur taluk of the East Godavari district in virtue of s. 2 (1) of Regulation I of 1909.

8. [*Commitment of witnesses for perjury.*] *Rep., Central Act XVII of* 1862.

9 & 10. [*Judgment and execution of decree: judgment-debtor's subsistence-money.*] *Rep., Central Act X of* 1861.

11. [*Certain decrees to be transmitted to Collector of Zila and Board of Revenue.*] *Rep., Central Act XII of* 1876.

12 to 15. [*Procedure on default of plaintiff or defendant to appear or plead: service of processes.*] *Rep., Central Act X of* 1861.

16. [*First clause.—Laws applicable to certain classes of suits.*] *Rep., Central Act III of* 1873.

Executors to Muhammadans and others whose heirs are not disqualified landholders to take charge of assets and execute trust. Courts not to interfere, except on regular complaint. Procedure on such complaint.

[1] *Second.*—In all cases of a Mussulman, or other person subject to the jurisdiction of the Zila Courts, having at his death left a will, and appointed an executor or executors to carry the same into effect, and in which the heir to the deceased may not be a disqualified landholder subject to the superintendence of the Court of Wards, the executors so appointed are to take charge of the estate of the deceased, and proceed in the execution of their trust according to the will of the deceased and the laws and usages of the country, without any application to * * * * * *[2] any * * [2] office of Government for his sanction: and the Courts of Justice are prohibited to interfere in such cases, except on a regular complaint against the executors for a breach of trust, or otherwise, when they are to take cognizance of such complaint, in common with all others of a civil nature, [2] * * * * * *[3] with respect to which the Judge is to be guided by the law of the parties, * * * * * *.[3]

Heirs of intestate or their guardians when not required to apply to Courts for permission to take possession.

Third.—In case of a Hindu, Mussulman or other person subject to the jurisdiction of the Zila Courts dying intestate,[4] but leaving a son or other heir, who by the laws of the country may be entitled to succeed to the whole estate of the deceased, such heir, if of age, and competent to take the possession and management of the estate, or if under age or incompetent, and

[1] This clause, so far as it applies to Hindus, was repealed by Mad. Reg. V of 1829, s. 2, while so much of it as applies to law-officers has been repealed by Mad. Act V of 1867.

[2] The words "the Judge of the Court of Adálat, or," the word "other" and the words "under the general rule contained in section V, Regulation II, 1802, and proceed thereupon according to the Regulations," were repealed by Central Act XII of 1876.

[3] The words "taking the opinion of their law-officers upon any legal exception to the executors, as well as upon the provision to be made for the administration of the estate, in the event of the appointed executor being set aside, and generally upon all points of law that may occur," and the words and figures "as expounded by his law-officers, subject to any modifications enacted by the Governor in Council in the form prescribed by Regulation I, 1802," were repealed by the Repealing and Amending Act, 1901 (Central Act XI of 1901), s. 3 (2) and the Third Schedule.

[4] As to extended application of this clause and also of the succeeding clauses, *see* Mad. Reg. V of 1829, s. 3.

not under the superintendence of the Court of Wards, his guardian or nearest of kin, who by special appointment, or by the law and usage of the country, may be authorized to act for him, is not required to apply to the Courts of Justice for permission to take possession of the estate of the deceased, as far as the same can be done without violence; and the Courts of Justice are restricted from interference in such cases, except a regular complaint be preferred, * * * .[1]

More heirs than one to intestate's estate may appoint common manager and take possession. When right of succession is disputed, security to be taken from party in possession. Failing such security, claimants giving it to be placed in possession.

Fourth.—If there be more heirs than one to the estate of a person dying intestate, and they can agree amongst themselves in the appointment of a common manager, they are at liberty to take possession, and the Courts of Justice are restricted from interference, without a regular complaint, as in the case of a single heir; but if the right of succession to the estate be disputed between several claimants, one or more of whom may have taken possession, the Judge, on a regular suit being preferred by the party out of possession, shall take good and sufficient security from the party or parties in possession, for his or their compliance with the judgment that may be passed in the suit; or, in default of such security being given, within a reasonable period, may give possession, until the suit may be determined, to the other claimant or claimants, who may be able to give such security; declaring, at the same time, that such possession is not in any degree to affect the right of property at issue between the parties, but to be considered merely as an administration to the estate for the benefit of the heirs who may, on investigation, be found entitled to succeed thereto.

When Judge may appoint administrator to manage intestate's estate.

Administration when to cease.

Fifth.—In the event of none of the claimants to the estate of a person dying intestate being able to give the security required by the preceding clause, and in all cases wherein there may be no person authorized and willing to take charge of the landed estate of a person deceased, the Judge within whose jurisdiciton such estate may be situated (or in which the deceased may have resided, or the principal part of the estate may lie, in the event of its being situated within two or more jurisdictions) is authorized to appoint an administrator for the due care and management of such estate, until, in the former case, the suit depending between the several claimants shall have been determined, or, in the latter case, until the legal heir to the estate, or other person entitled to receive charge thereof as executor, administrator or otherwise, shall attend and claim the same; when, if the Judge be satisfied that the claim is well founded, or if the same be established after any enquiry that may appear necessary, the administrator appointed by the Court shall deliver over the estate to him, with a full and just account of all receipts and disbursements during the period of his administration.

[1] The words "when they are to proceed thereupon according to the general regulations" were repealed by Central Act XII of 1876.

Security to be taken from administrators appointed under this section. How their allowance is to be fixed.

Sixth.—In all instances of an administrator being appointed under this section, he is, previous to entering upon the execution of his office, to give good security for the faithful discharge of his trust, in a sum proportionate to the extent thereof; and the Judge appointing him is authorized to fix for him (subject to the approbation of the Court of Sadar Adálat, to whom a report is to be made in such instances) an adequate personal allowance to be paid out of the proceeds of the estate, and to be a percentage thereupon after deducting the expenses of management.

Procedure in cases of persons dying intestate, leaving unclaimed personal property.

Seventh.—The Judges of the Zila Courts, on receiving information that any person within their respective jurisdictions has died intestate, leaving personal property, and that there is no claimant to such property, are to adopt such measures as may be necessary for the temporary care of the property, and to issue an advertisement, in the current language of the country, requiring the heir of the deceased, or any person entitled to receive charge of his effects, to attend for this purpose; such advertisement to be published on the spot where the property was found, at the Adálat, kachari of the zila and, if ascertainable, at the dwelling-place of the deceased. . . .[1] after which, should any person attend, and satisfy the Judge of his title to the property, or to receive charge thereof as executor, administrator or otherwise the same is to be delivered up to him, on repayment of any necessary expense incurred in the care of it.

Should no claim be preferred within the twelve months next ensuing, an inventory of the property, and report of the circumstances of the case, is to be transmitted to the [2][State Government] for [3][their] orders.

17 to 20. [*Rules as to reference of questions of fact and law : local investigations of amins : costs payable by plaintiff : order of trial of suits and cause-list.*] *Rep., Central Act X of* 1861.

21. [*Language and character of processes, and payment of peons.*] *Rep., Central Act XVI of* 1874.

22 to 26. [*Power of Court to fine for certain contempts of authority : procedure in cases when land proprietors, Government farmers or other persons resist processes.*] *Rep., Mad. Act II of* 1869.

27 to 29. [*Contents of decrees of Court : form of security bond for attendance of defendants.*] *Rep., Central Act X of* 1861.

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[1] The words "or, if the deceased were an European, in the Madras Gazette," were repealed by the Repealing and Amending Act, 1901 (Central Act XI of 1901), s. 3 (2) and the Third Schedule.

[2] The words "Provincial Government" were substituted for the words "Governor in Council" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

[3] This word was substituted for the word "his" by the Adaptation Order of 1937.